

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOANN KOSTIAL,	)	
	)	
Plaintiff,	)	Civil Action No. 2:11-cv-725
	)	
v.	)	Judge Terrence F. McVerry
	)	Chief Magistrate Judge Lisa Pupo
TOYOTA OF GREENSBURG and	)	Lenihan
DANIEL OWENS,	)	
	)	ECF Nos. 6, 13
Defendants.	)	
	)	

**MEMORANDUM ORDER**

The Complaint in the above captioned case was filed on June 2, 2011 and was referred to Chief United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 13), filed on November 15, 2011, recommended that Defendants' Motion for Partial Dismissal of Plaintiff's Complaint (ECF No. 6) be granted with prejudice as to Count 7. The Report and Recommendation further recommended that Defendants' Motion be granted without prejudice as to Counts 5 and 6, and that Plaintiff be allowed to file an amended complaint to cure the deficiencies identified in the Report and Recommendation. Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule

72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections.

On November 17, 2011, Plaintiff filed a Motion for Clarification of the Report and Recommendation (ECF No. 14), seeking a clarification regarding her ability to file an amended complaint alleging violations of the PHRA. On November 21, 2011, the magistrate judge entered an order (ECF No. 15) on Plaintiff's motion for clarification ("Clarification Order"), granting the motion and clarifying that the Report and Recommendation recommends that if the PHRA claim was administratively closed prior to the expiration of the one-year time period, Plaintiff would not have exhausted her administrative remedies, and thus should be granted leave to amend her Complaint to plead her claim under the PHRA after the one-year time period has passed. Subsequently, Defendants filed Objections (ECF No. 16) to the Report and Recommendation on December 2, 2011, objecting to those portions of the Report and Recommendation and the Clarification Order that: (1) conclude that Plaintiff's failure to exhaust her administrative remedies can be cured by the mere passage of time; and (2) recommend that Plaintiff's PHRA claims (Counts 5 and 6) be dismissed without prejudice with leave to amend after the expiration of the one-year period.

After review of the pleadings and documents in the case, together with the Report and Recommendation and objections thereto, the following Order is entered:

**AND NOW**, this 7th day of December, 2011,

**IT IS HEREBY ORDERED** that Defendants' Motion for Partial Dismissal (ECF No. 6) is **GRANTED WITH PREJUDICE** as to Count 7 of Plaintiff's Complaint.

**IT IS FURTHER ORDERED** that Defendants' Motion for Partial Dismissal (ECF No. 6) is **GRANTED WITHOUT PREJUDICE** as to Counts 5 and 6 of Plaintiff's Complaint, and that Plaintiff shall be allowed to file an amended complaint to cure the deficiencies identified in the Report and Recommendation within the latter of fourteen (14) days of the expiration of the one-year period or within fourteen (14) days of the date of this Order.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 13) of Chief Magistrate Judge Lenihan, dated November 15, 2011, is adopted as the opinion of the Court.

s/ Terrence F. McVerry  
TERRENCE F. McVERRY  
United States District Judge

cc: All Counsel of Record  
*Via Electronic Mail*